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ABSTRACT

This booklet presents the policy of the Colorado Developmental Disabilities Planning Council to affirm and promote the sexuality rights and responsibilities of persons with disabilities. The purpose of the policy is to guide the community and empower persons with disabilities in Colorado to ensure that their inherent sexual rights and basic human needs are affirmed, defended, promoted, and respected. Guidelines are offer to assist in the development and implementation of policies and practices regarding human sexuality. The guidelines deal with privacy, sexual expression, access to sexuality education and services, agency responsibilities, staff training, definitions, legal implications, and laws relating to sexuality and persons with disabilities. (JDD)

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SEXUALITY RIGHTS PROTECTION POLICY

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INTRODUCTION

COLORADO COMMITTEE ON SEXUALITY

The Colorado Committee on Sexuality began as a result of growing concerns on this issue throughout the state of Colorado. For many years, this issue has been a topic of discussion but never has been addressed formally.

In 1988, Speaking for Ourselves, a self-advocacy group for people with developmental disabilities, finally approached the Colorado Developmental Disabilities Planning Council and requested that this issue be addressed. The CDDPC then made this issue a priority. They started by having focus groups around the state of Colorado to identify what the issues around sexuality really were. Following that, they had a retreat with many of the leaders in the field of developmental disabilities and physical disabilities from around the state. (It was decided that the issue of sexuality crossed all lines of disabilities.) The retreat had one purpose - to develop a state policy on sexuality for people with disabilities. This was accomplished and finalized in 1989. In December of 1989, the Board of Directors of the CDDPC approved and adopted this policy.

In January, 1990, the Colorado Committee on Sexuality was established. The members consisted of interested persons from various fields of disabilities from around the state. They met on a regular basis for the purpose of disseminating the information on the Sexuality Rights Protection Policy. They identified over 200 agencies or groups that needed to receive this policy. They were accepted to present the Sexuality Rights Protection Policy at the Interagency Conference in February, 1991. Finally, they developed a booklet which would include the Sexuality Rights Protection Policy as well as resources available in this state. Their goal to increase the awareness of sexuality for persons with disabilities and to inform parties about the Sexuality Rights Protection Policy will be accomplished in 1991. The next goal will be to have a Consumer Committee on Sexuality.

We would like to thank all of the people who put a lot of time and effort in the development of this booklet and disseminating the information so that you will have a better understanding of the issue of sexuality.

SEXUALITY RIGHTS

PURPOSE

This policy is to guide the community and empower persons with disabilities in Colorado to ensure that their inherent sexual rights and basic human needs are affirmed, defended, promoted, and respected.

PHILOSOPHY

We are all sexual beings growing up with individually determined values of family, culture and community.

We have inherent and basic human needs which includes sexuality.

Every person shall have the right to develop self-identity, self-esteem and self-respect.

Every person shall have the opportunity to access individualized education and support regarding sexuality to the fullest extent throughout one's life.

Every person shall have the opportunity for choices, regarding sexual expression and social relationships.

Every person has basic human rights, such as privacy, confidentiality and freedom of association. These rights shall be encouraged, protected and defended so that all persons may be free from physical, sexual and emotional abuse.

POLICY

The policy of the Colorado Developmental Disabilities Planning Council is to affirm and promote the sexuality rights and responsibilities of persons with disabilities. Information, opportunities, and assistance shall be provided to assure the full exercise of these sexuality rights and responsibilities.

GUIDELINES

The following guidelines are designed to assist the agency in the development and implementation of policies and practices regarding human sexuality. The guidelines are a resource for staff when addressing sexuality issues and offer support to persons with disabilities in addressing their rights to sexuality expression and obtaining services.

These guidelines reflect current best practices in human sexuality service provision and should be applied as recommendations to ensure human sexuality issues are addressed in a progressive and sensitive manner.

PROTECTION & PROMOTION OF RIGHTS

All persons have the right to privacy in order to have the opportunity for sexual expression.

PRIVACY

Persons have the opportunity to discuss their sexuality on a formal, informal, and private level with persons of their choice.

Personal or intimate sexuality issues are not discussed in group settings, unless at the discretion of the person or in consultation with the trans-disciplinary team to plan for enhancement of social and interpersonal skills.

Sexual expression and choices of persons are private and subject to the same rules of confidentiality as other matters.

All persons have a right to sexual expression, including the rights to develop sexual relationships, to choose sexual orientation, marital status, procreation and parenting.

EXPRESSION

Persons are afforded the opportunity to choose friends outside of their homes and to entertain friends in their homes.

Affectionate and sexual interactions shall be private and by mutual consent.

All persons have the opportunity to variations in sexual expression (e.g. celibacy, masturbation, homosexuality, bisexuality, heterosexuality, cross-dressing, etc.)

All persons have the opportunity to marry and/or have children.

ACCESS TO SERVICES

Sexuality education is not limited to biological issues but includes: relationship-building, social skills, decision making, values clarification, birth control and family planning, parenting, premarital and marital counseling, childbirth education, dating, grooming, hygiene, and sexually transmitted diseases.

All persons have the right to access services, including education, health care, and other community resources.

Training in self protection and how to avoid being exploited is available to persons with disabilities. This shall include assertiveness training, learning how to say "no", reporting incidents of abuse and exploitation, and may include self-defense training.

Education and training is individualized to meet the person's needs and level of understanding. It should include the opportunity for actual practice, role play or assisted experience, or mentoring whenever possible.

Persons are provided with physical assistance and/or adaptations, when necessary, for purposes of sexual expression and activity.

Specialized counseling is available to persons interested in marriage and/or parenting, and on-going support and assistance is provided to couples.

Persons with disabilities are provided information regarding sexually transmitted diseases, including prevention, consent for testing, treatment, rights to confidentiality.

Persons with disabilities who also have maladaptive sexual behavio sexual disorders, or sexual dysfunctions have access to appropriate treatment.

AGENCY RESPONSIBILITIES

Agencies develop policies and practices that ensure the free expression of sexuality for all persons with disabilities.

Agencies ensure the participation of persons with disabilities in the development of policies and practices which promote privacy and ensure sexual expression.

Agencies make available to persons with disabilities on-going counseling, education, and support in human sexuality.

Agencies identify and use community resources regarding human sexuality (e.g., support groups and family planning services).

The agency has a plan to meet the sexuality needs of persons with disabilities. The plan will include identification of qualified staff or referral source to provide sex education, training and counseling.

The agency makes available assistance and support to persons with disabilities in addressing sexuality issues with parents, family members and other providers. This may include obtaining an advocate.

The agency has established procedures to screen allegations of sexual misconduct. Any suspected illegal activity is reported immediately to the appropriate agency, i.e. law enforcement or department of social services.

When sexual behavior is considered to be socially inappropriate, the agency intervenes in an objective manner which preserves the dignity of the persons involved.

Agencies intervene in sexual activities of persons with disabilities only to the extent necessary to reasonably reduce risks associated with sexual practices and exploitation.

Staff/volunteers are prohibited from sexually exploiting persons with disabilities.

STAFF TRAINING

Agencies provide on-going, comprehensive staff training and development in human sexuality and in the rights of persons with disabilities to sexual expression.

Agencies provide orientation to all new staff regarding sexuality policies and procedures.

Staff are trained to discriminate between legal and illegal sexual activities. Staff are also trained to recognize potentially harmful sexual behavior and to obtain resources to determine degree and type of intervention.

Agencies provide staff education to support social/sexual relationships of persons with disabilities, including sexual preferences different from those of staff.

Agencies provide training on universal precautions of handling body fluids to prevent the spread of infectious diseases.

DEFINITIONS

Sexuality

Sexuality is part of the totality of being human and includes all aspects of persons that relate to being male or female. Sexuality is part of every individual's life from conception to death and subject to lifelong dynamic change. Sexuality is essential to human health and well-being.

Confidentiality

Confidentiality is the guarantee that information about a person is only made available to others with the knowledge and consent of the individual or his/her legal guardian. Dissemination of such information involves the application of the "need to know" principle, by which others receive only as much information as they need in order to serve and benefit the individual in a sensitive manner.

Privacy

Privacy is the right to engage in sexual activities with the minimum amount of intrusion that is reasonably possible.

Sexual Abuse (Sexual Exploitation)

Sexual abuse is any sexual act which occurs as a result of coercion, physical force, or taking advantage of a person's disabilities.

Sex Education/Counseling/Training

The preparation for personal relationships by providing appropriate educational opportunities is designed to help the person develop understanding, acceptance, respect and trust for oneself and others.

Sex education includes the knowledge of physical, emotional and social growth, maturation, and understanding of individual needs. In cases where the person demonstrates required understanding, this education may include "counseling" in the traditional sense. In those cases in which "education" in the traditional sense would be beyond the person's ability to understand and benefit, individualized education may be an effective approach.

Adopted by the Colorado Developmental Disabilities Planning Council, December, 1989

LEGAL IMPLICATIONS

Colorado citizens with developmental disabilities have the same rights as the rest of the population. The rights are outlined in the Bill of Rights and protected by the Constitution.

Many legislated rights have direct relation to the sexuality of citizens with a developmental disability including the right to treatment and education, right to privacy, right to free association and communication, right to marry and raise children, and the right to equal protection under the law. (See Appendix of Laws).

Title VI of the Civil Rights Act and Title V of the Rehabilitation Act prohibit discrimination in programs or activities which receive federal financial aid. The Education of All Handicapped Children Act guarantees free, appropriate public education and an individualized education plan for each child.

Certain rules and regulations of state agencies are specific in their affirmation of the important right to sexual expression.

"Policies and procedures may not prohibit a person receiving services from exercising their right to sexual interaction based on individual choice."

> Training in human sexuality, growth and development shall be available to persons receiving services. (6.2.2.5 Colorado Division for Developmental Disabilities, Rules and Regulations)
>
> The right to have private and unrestricted communications with any person of his or her choice including (3) the right to private consensual sexual activity." (12.1.7 Colorado Department of Health Regulations)

In the developmental disabilities system, the Human Rights Committee has statutory authority to monitor the suspension or restriction of client rights. The Human Rights Committee also reviews program interventions designed to restore the suspended right. Rights can only be denied with the consent of the consumer.

Clearly with regard to denial or suspension of any right, the legal principle of an individual's right to "due process" must be exercised.

For example, a person under an order of guardianship in Colorado does not forfeit the right to sexual expression.

The issue of a person's mental capacity to consent to sexual activity is a dificult one.

Consent as a legal concept was designed as a protection against sexual coercion, not to deny sexual expression. The law specifies "The actor knows that the victim is incapable of appraising the nature of the victim's conduct" is a factor in determining sexual assault (C.R.S. 18-3-403). However, many people with developmental disabilities have not received education in sexual behavior and consequently are unable to make informed decisions. Attempts to deny individual right to sexual expression, even when motivated by concern for exploitation, capacity, and other consequences, seriously violates the spirit and meaning of personal freedom.

Agency concern for legal liability in honoring consumer's right to sexual expression has been a traditional barrier. Management and professionals must recognize that the right to sexuality is affirmed in Colorado Law and "A violation of any provision of this article shall give rise to a civil cause of action by the person adversely affected by such violation and any judgment may include plaintiffs reasonable attorney fees." C.R.S. 27-10.5-134

Laws Relating to Sexuality and Persons with Disabilities

Constitutional Guarantees

First Amendment - Right to privacy, communication
Eighth Amendment - Right to free association, equal protection
Fourteenth Amendment - Right to due process

Federal Laws

Section 504 of the Rehabilitation Act prohibits discrimination in programs and services that receive federal financial aid.

Fair Housing Act

Prohibits discrimination and any practice that "otherwise makes unavailable" housing opportunities for all citizens.

P.L. 94-142 Education of the Handicapped Act

Mandates "free and appropriate public education" and "individualized education plan" for all students.

American with Disabilities Act

The act will extend protections from discrimination into the private sector.

Colorado Law

C.R.S. 27:10.5 - Rights of persons with developmental disabilities receiving services
C.R.S. 27:10 - Rights of persons with mental illness

SB 13

Forbids discrimination based upon mental handicap. Three-year phase-in implementation 1990.

Colorado Civil Rights Commission
C.R.S. 24-34-306 - Investigates allegations of civil rights violations.

Sterilization
C.R.S. 27-10.5-128 thru 131- No person may be sterilized without their consent.

Imposition of Legal Disability
C.R.S. 27-10.5-110 - Court authority to deny individual right(s) with periodic reviews.

Sexual Assault
C.R.S. 18-3-401

Guardianship
C.R.S. 15-14-301

Consent (Criminal Code)
C.R.S. 18-1-505

Informed Consent
C.R.S. 27-10.5-102 (2a)

Duty to Report a Crime
C.R.S. 18-8-115

Abortion
C.R.S. 18-6-101

Prostitution
C.R.S. 18-7-201

Marriage
C.R.S. 14-2-112

Divorce
C.R.S. 14-10-102

Bigamy
C.R.S. 18-6-102

Adultery
C.R.S. 18-6-501

Legal implications submitted by the Legal Center Serving Persons with Disabilities December, 1989.

ACKNOWLEDGMENTS

Thanks to the Colorado Committee on Sexuality for putting together a policy, and to the Colorado Developmental Disabilities Planning Council, 777 Grant, Suite 410, Denver, Colorado 80203 for funding this project.

To request extra copies of this pamphlet, call either RMRTI at 800-255-DIRS (3477) or the DD Planning Council at (303) 894-2345

For resources and information on this issue, call:

ROCKY MOUNTAIN RESOURCE AND TRAINING INSTITUTE

800-255-DIRS 800-255-3477

Consumers are encouraged to use this resource for information.